

Senate Bill 56

By: Senators Thomas of the 54th, Unterman of the 45th, Harbison of the 15th, Hooks of the 14th and Pearson of the 51st

AS PASSED

AN ACT

To amend Chapter 14 of Title 31 of the Official Code of Georgia Annotated, relating to hospitalization for tuberculosis, so as to revise a definition; to revise obsolete references; to revise certain provisions relative to confinement of patients committed for tuberculosis treatment; to revise certain provisions relative to continuation of confinement of patients committed for tuberculosis treatment; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 12 of Title 31 of the Official Code of Georgia Annotated, relating to hospitalization for tuberculosis, is amended by striking such chapter in its entirety and inserting in lieu thereof the following:

"31-14-1.

(a) As used in this chapter, the term 'active tuberculosis' means a diagnosis demonstrated by clinical, bacteriologic, or diagnostic imaging evidence, or a combination thereof. Persons who have been diagnosed as having active tuberculosis and have not completed a course of antituberculosis treatment are still considered to have active tuberculosis and may be infectious.

(b) Active tuberculosis is declared to be dangerous to the public health.

31-14-2.

When the county board of health or the Department of Human Resources has evidence that any person has active tuberculosis and is violating the rules and regulations promulgated by the department or the orders issued by the county board of health and thereby presents a substantial risk of exposing other persons to an imminent danger of infection, after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, the county board of health or the department shall institute

proceedings by petition for commitment, returnable to the superior court of the county wherein such person resides or, if such person is a nonresident or has no fixed place of abode, in the county wherein such person may be found. The petition executed under oath shall state the specific evidence supporting the allegations, that the evidence has existed within the preceding 30 days, that the person named therein has active tuberculosis and is violating the rules and regulations of the department or the orders of the county board of health and presents a substantial risk of exposing other persons to an imminent danger of infection, after having been directed by the county board of health or department to comply with such rules, regulations, or orders, and that the public health requires commitment of the person named therein. The petition must be accompanied by a certificate of a physician stating that the physician knows or suspects that the person named therein may have active tuberculosis, the evidence which forms the basis of this opinion, and whether a full evaluation of the person is necessary.

31-14-3.

(a) Immediately upon the filing of a petition pursuant to Code Section 31-14-2, the judge of the superior court shall set the matter for a full and fair hearing on the petition. Such hearing shall be held no sooner than seven days and no later than 12 days, excluding Saturdays, Sundays, and holidays, subsequent to the time of filing of the petition. The court shall serve personal notice of the hearing upon the person named in the petition and upon the petitioner. The notice required by this Code section shall include the time and place of the hearing; notice of the person's right to counsel, that the person may apply for court appointed counsel if the person cannot afford counsel, and that the court will appoint counsel unless the person indicates in writing that he or she does not wish to be represented by counsel; and notice that the person may waive his or her rights to a hearing under this Code section. A copy of the petition and physician's certificate filed under Code Section 31-14-2 shall be attached to the notice. The judge shall, where prayed for in the petition, provide for the examination of the person named therein by a physician licensed under Chapter 34 of Title 43, which examination shall include sputum examinations by a laboratory approved by the department and a recent chest X-ray of good diagnostic quality interpreted by a physician licensed to practice under Chapter 34 of Title 43, as a part of the order setting the matter for hearing; the order shall require the person or persons named therein to make such examination. Any X-ray and accompanying report or any written report as to a sputum examination shall be admissible as evidence without the necessity of the personal testimony of the person or persons making such examination and report. A

physician may rely upon this evidence as the basis for the diagnosis of active tuberculosis and the defendant may offer opposing evidence on this issue by testimony or otherwise. All court costs incurred in proceedings under this chapter, including costs of examinations required by order of court but excluding any examinations procured by the person named in the petition, shall be borne by the county wherein the proceedings are brought. The fee to be paid to an attorney appointed under this Code section to represent a person who cannot afford counsel shall be paid by the county board of health instituting proceedings for commitment.

(b) A full and fair hearing shall mean a proceeding before a hearing examiner under Code Section 31-14-8.1 or before the superior court in a proceeding under subsection (a) of this Code section. The hearing may be held in a regular court room or in an informal setting, in the discretion of the hearing examiner or the court, but the hearing shall be recorded electronically or by a qualified court reporter. The person named as defendant shall be provided with the opportunity for the assistance of counsel. If the defendant cannot afford counsel, the court shall appoint counsel for the defendant or the hearing examiner shall request that the court appoint such counsel; provided, however, that the defendant shall have the right to refuse in writing appointment of counsel. Both parties shall have the right to confront and cross-examine witnesses, to offer evidence, and to subpoena witnesses. Both parties shall have the right to require testimony before the hearing examiner or in court in person or by deposition from any physician upon whose evaluation the decision of the hearing examiner or the court may rest. The hearing examiner and the court shall apply the rules of evidence applicable in civil cases, except as otherwise provided for in this chapter. The burden of proof shall be upon the party seeking commitment of the defendant. The standard of proof shall be by clear and convincing evidence. At the request of the defendant, the public may be excluded from the hearing. The defendant may waive his or her right to be present at the hearing. The reason for the action of the court or the hearing examiner in excluding the public or permitting the hearing to proceed in the defendant's absence shall be reflected in the record.

31-14-4.

A copy of the petition and order shall be served on the person named in the petition. Any failure of such person to comply with the order or with the notice by the persons appointed therein to make examination shall be enforceable by attachment for contempt.

31-14-5.

Where a danger exists that the person named in the petition may abscond or conceal himself or herself or where the person is conducting himself or herself so as to present a substantial risk of exposing other persons to an imminent danger of infection, the court may, as a part of the order made pursuant to Code Section 31-14-3, direct the sheriff or the sheriff's deputies to take such person into custody pending hearing and impose such confinement as will not endanger other persons. An affidavit shall be attached to the petition containing the specific facts supporting the need for custody pending hearing.

31-14-6.

The person or persons appointed by the order to make the examination shall file a report thereof, in triplicate, in the court wherein the proceeding is pending. The clerk of the superior court shall forthwith make service of one copy on the agency instituting the proceeding and one copy on the party named as defendant therein and the defendant's attorney, which service shall be personal or by certified mail or statutory overnight delivery.

31-14-7.

(a) Upon the hearing set in the order, if the court finds that the person has active tuberculosis, is violating the rules and regulations promulgated by the department or the orders issued by the county board of health after having been directed by the county board of health or the department to comply with such rules, regulations, or orders, presents a substantial risk of exposing other persons to an imminent danger of infection, and there is no less restrictive available alternative to involuntary treatment at a hospital or facility approved by the department for the care of tubercular patients, then the court shall issue an order committing the defendant to the custody of the sheriff of the county or the sheriff's deputies to be delivered to the designated hospital or facility, where the defendant shall be admitted for care and treatment not to exceed two years. If the court does not find that the above standards are met, then the court shall dismiss the petition and the defendant shall be released from custody if taken into custody pursuant to Code Section 31-14-5. The costs of transporting such person to the hospital or facility shall be paid out of county funds.

(b) An order for commitment shall be subject to review at the instance of either party by appeal.

31-14-8.

Upon commitment the patient shall be confined in a hospital or facility approved by the department for the care of tubercular patients for a period not to exceed two years unless, before the expiration of such two-year period, the designated responsible physician of the tuberculosis inpatient unit determines that the following conditions no longer exist:

- (1) The patient has active tuberculosis; or
- (2) The patient has active tuberculosis and there is a substantial likelihood of future noncompliance with a proposed treatment plan which will predictably lead to the development of infectious drug-resistant tuberculosis. The likelihood of noncompliance must be based upon a history of noncompliance with treatment; provided, however, that short emergency leaves in the event of death or critical illness in the family or short therapeutic leaves may be granted under conditions which would not adversely affect the public health and in accordance with rules and regulations established by the department.

31-14-8.1.

(a) If it is necessary to continue confinement of a committed patient beyond a period of two years ordered by a court or hearing examiner or authorized under subsection (d) of this Code section, the designated responsible physician of the tuberculosis inpatient unit shall review and update the patient's treatment plan and shall prepare a report giving evidence of the necessity of such continued confinement. The report shall be prepared so as to allow sufficient time for the hearing authorized by this Code section to be conducted before the expiration of the two-year period of confinement. The report shall specify that, based upon clinical or X-ray evidence:

- (1) The patient is a person having active tuberculosis requiring continued commitment; or
- (2) The patient is a person having active tuberculosis with a substantial likelihood of future noncompliance with a proposed treatment plan which will predictably lead to the development of infectious drug-resistant tuberculosis. The likelihood of noncompliance must be based upon a history of noncompliance with treatment.

(b) Such report shall be filed in the patient's medical record. A copy of the report shall be personally served on the patient along with a statement that the patient may, within 15 days after service of the report, file a request for a hearing to be conducted in accordance with the procedure for contested cases under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except as otherwise provided in this chapter, that the patient has a right to counsel at the hearing, that the patient may apply immediately to the superior court in the county where the committed patient is confined to have counsel appointed if the patient

cannot afford counsel, and that the court will appoint counsel for the patient unless the patient indicates in writing that he or she does not desire to be represented by counsel or has made his or her own arrangements for counsel. Payment for such court appointed representation shall be made by the department. The hearing may be continued as necessary to allow the appointment of counsel.

(c) If a hearing is requested within 15 days of service of the report on the patient, the hearing examiner shall set a time and place for the hearing to be held within 15 days of the time the hearing examiner receives the request. The hearing examiner may set a hearing if a request is made later than 15 days after service of the report if good cause is shown for the delay in making the request. Notice of the hearing shall be personally served on the patient, the hospital or facility, and, when appropriate, on counsel for the patient. Such hearing shall be a full and fair hearing, as described in Code Section 31-14-3, before a hearing examiner. After such hearing, the hearing examiner may issue any order which the court is authorized to issue under Code Section 31-14-7.

(d) If a hearing is not requested within 15 days of service of the report on the patient, the department shall be authorized to continue confinement of the patient for an additional period not to exceed six months.

31-14-8.2.

Either party may appeal any order of the superior court or hearing examiner in a proceeding under this chapter. An order of the superior court may be appealed to the Court of Appeals and the Supreme Court as provided by law but shall be heard as expeditiously as possible. The appeal of an order of a hearing examiner shall be to the superior court of the county in which the proceeding was held. The review shall be conducted by the superior court without a jury and shall be confined to the record. The court, upon request, may hear oral argument and receive written briefs. The patient must pay his or her costs upon filing any appeal authorized under this Code section or must make an affidavit that he or she is unable to pay costs. The parties shall retain all rights of review of any order of the superior court, the Court of Appeals, and the Supreme Court, as provided by law. The patient shall have a right to counsel on appeal or, if unable to afford counsel, shall have counsel appointed for the patient by the court. The appeal rights provided in this Code section are in addition to any other appeal rights which the parties may have.

31-14-9.

(a) At any time after commitment and not more often than once every six months, the patient or any friend or relative having reason to believe that the patient no longer has active tuberculosis or that the patient's discharge will not endanger the public health may institute proceedings by petition in the superior court of the county wherein the confinement exists, whereupon the judge shall set the matter for a hearing to occur within 15 days requiring the person or persons to whose care the patient was committed, or their duly authorized agents, to show cause on a day certain why the patient should not be discharged. The judge shall also require that the patient be allowed the right to be examined prior to the hearing by a licensed physician of the patient's own choice and at the patient's own personal expense. Thereafter all proceedings shall be conducted in the same manner as are proceedings for commitment.

(b) In addition to the above procedure for securing discharge, the patient or a friend or relative on behalf of such person may petition, as provided by law, for a writ of habeas corpus to question the cause and legality of detention and to request a court of competent jurisdiction to issue a writ for release, provided that a copy of the petition along with the proper certificate of service shall also be served upon the presiding judge of the court ordering such detention and upon the county board of health or the Department of Human Resources which initiated the petition for commitment pursuant to Code Section 31-14-2, which service shall be made by certified mail or statutory overnight delivery.

31-14-10.

The county boards of health or their duly authorized agents shall, within their respective limits, enforce rules and regulations adopted by the department for the protection of the public against active tuberculosis.

31-14-11.

Any person who leaves a hospital or facility approved by the department for the treatment of tuberculosis to which he or she has been committed by court order, without having been discharged by the medical staff of the tuberculosis inpatient unit or the community tuberculosis control unit, shall be taken into custody and returned thereto by the sheriff of any county where such person may be found, upon affidavit being filed with the sheriff by the designated responsible official of the hospital or facility to which such person has been committed.

31-14-12.

No person having active tuberculosis who, in his or her home or other place, obeys the rules and regulations of the department and county boards of health for the control of active tuberculosis or who voluntarily accepts care in a hospital or facility operated for the care of tuberculosis, in his or her home, or in another place and who obeys the rules and regulations of the department and completes the prescribed course of therapy for the control of active tuberculosis shall be committed as prescribed in this chapter.

31-14-13.

(a) In lieu of the petition for commitment as authorized by Code Section 31-14-2, the county board of health or the department may petition the court for an order directing the person to comply with a plan of evaluation or outpatient treatment. The department may also petition the court for an order directing the parents, guardians, or custodians of persons under the age of 18 who have been exposed to tuberculosis to allow screening for tuberculosis by public health authorities or to provide evidence of such screening by a licensed physician. Proceedings, evidence, and hearings thereon will be in the same manner as with commitment petitions, and upon the hearing the court may dismiss the petition or order the person to comply with the screening, evaluation, or outpatient treatment plan. The court may also modify the plan prior to ordering compliance.

(b) A petition for outpatient treatment as authorized by subsection (a) of this Code section may also be initiated by a county board of health or the department where a previously hospitalized, diagnosed, or committed patient's condition no longer requires hospitalization or commitment but where protection of the public health requires continued treatment on an outpatient basis of said patient.

(c) Any person known or suspected to have tuberculosis who fails to comply with a plan of evaluation or outpatient treatment ordered pursuant to this Code section, or any parent, guardian, or custodian of a person under the age of 18 who fails to comply with screening ordered pursuant to this Code section or who aids or abets such failure may be punished as for contempt. Contempt proceedings may be initiated by the filing of a petition by the county board of health or by the department with the superior court of the county of the patient's residence or the county where the patient may be found if a nonresident or without a fixed place of abode.

31-14-14.

Any physician, peace officer, attorney, or health official, or any hospital or facility official, agent, or other person employed by a private hospital or facility or at a hospital or facility operated by the state, by a political subdivision of the state, by a county board of health, or by a hospital authority created pursuant to Article 4 of Chapter 7 of Title 31, who acts in good faith in compliance with the admission and discharge provisions of this chapter shall be immune from civil or criminal liability for his or her actions in connection with the admission of a patient to or the discharge of a patient from a hospital or facility approved by the department for the care of tubercular patients."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.